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CONTROLLING ADOLESCENT ACCESS TO TOBACCO:
THE WOODRIDGE TOBACCO LICENSE LAW AND DePAUL UNIVERSITY EVALUATION

As a police officer assigned to teach a 17-week drug prevention program to over 1,500 students, I made some startling discoveries. The first is the average age children begin to use cigarettes is now 13 years old, nationwide, but only 12 years old in my community. The next was that nicotine addiction in adolescent smokers is acquired quickly, usually before the child is old enough to legally buy cigarettes. And, sadly, I learned that merchants will not voluntarily stop selling cigarettes to 13-year-old minors, even after a written warning is received from the police.

Finally, I see the issue of 13-year-old children having easy access to large quantities of cigarettes as a serious police matter. Not only do we lose more American lives to nicotine addiction than all other drugs and alcohol combined, but that, for adolescents, cigarettes are "gateway drugs" to illicit drugs such as marijuana and crack cocaine. I firmly believe that we will not make significant progress in the war on drugs until we address the issue of adolescent access, use and addiction to tobacco.

Woodridge, Illinois is addressing this issue with a unique law that has reduced tobacco sales to minors from 83% to zero. But without a national approach, our local efforts may have been for naught, because the merchants whose stores boarder Woodridge continue to sell cigarettes to 13-year-old children 94% of the time.

J. Let me share with you my experience that lead to our tobacco law and the results of the DePaul University study on the law's effects.

While teaching the Drug Abuse Resistance Education (DARE) program at Jefferson Junior High School, I received complaints from teachers, parents and even the students, themselves, that Woodridge merchants were selling cigarettes to minors. On one occasion, a gym teacher observed a 13-year-old female student purchase a pack of Marlboros from a Mobil Oil gasoline station just two blocks from the school. The teacher reported the occurrence to the principal, as student possession of cigarettes is a violation of school regulations. The principal suspended the girl after calling her to the office and finding the cigarettes in her purse. He then met with me and asked, "Isn't it illegal to sell cigarettes to 13-year-old students? Isn't there something the police can do to stop this?"

Illinois State law, (Chapter 23, Section 2357), prohibits the sale of tobacco products to anyone under the age of 18 years. However, the law was adopted in 1887 and carries a penalty of only \$50. That may have been a great deal of money in 1887, but is hardly a deterrent today. The manager of a gasoline station in Woodridge related that he averages between \$200 to \$400 per day in cigarette sales, making a \$50 fine meaningless.

This archaic law contains a loophole big enough to drive a truck load of cigarettes through, and explains why police agencies have never enforced it. The law states that if a minor possesses a written note from a parent or guardian, then the child is exempt from the law regardless—of age!

How is the police officer, or for that matter a reputable merchant, able to verify the authenticity of the note before enforcing the law? And even if the police could check with the parent, most parents would be unlikely to involve their child in a police action over the forged note. After closely examining the old statute, the Chief of Police agreed the law was realistically unenforceable. I have not been able to find even one occasion in the State of Illinois when this law has been enforced.

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The Woodridge police response to the principal's complaint was to send a letter to each tobacco-selling merchant from the Chief of Police. The letter related the complaints and advised that tobacco sales to minors under 18 years of age is a criminal offense and runs counter to the anti-drug programs the community had undertaken. The letter closed with a warning that arrests would be made under the State law if repeat violations occurred.

The school approved of the response and the police department felt the matter was closed - until I saw a new report of a study done in Chicago by DePaul University. That study found that 87% of Chicago merchants sold cigarettes to minors in violation of the Illinois 18-year-age limit. I phoned the author, Dr. Leonard A. Jason, and told him we had the same problem and solved it with the police letter. Dr. Jason shot back, "You won't know what effect your letter had on merchant behavior until you scientifically test it."

Of course, he was right. We had hoped our merchants would comply. After all, would an adult really sell cigarettes to a 13-year-old child after being warned by the police? The answer is yes!

Dr. Jason advised us on how to replicate his Chicago study and supervised its execution. Each merchant was approached on three different days and at different times of the day in order to obtain a true sample of different clerks' behavior. The 13-year-old student volunteers were told to wear jeans and sweat shirts. Girls were not allowed to wear jewelry or makeup. Each student was photographed to document their age-appropriate appearance. In all cases, the student would enter the store alone and was instructed to ask for a pack of cigarettes. If asked for their age, they were instructed to say 13 years. I observed the scene from an unmarked police car, and recorded the data after each visit.

The study found that 83% of Woodridge merchants continued to sell cigarettes to 13-year-old minors *after* being warned in writing by the police that such sales violated State law. Given the 87% sales rate in the DePaul/Chicago study where no warning was given, the Woodridge police warning letter had no effect on tobacco sales to minors.

Faced with an unenforceable State law and a continuing violation, I wrote a city ordinance that required a special license to sell tobacco products. The Woodridge tobacco license law is similar to a liquor license, in that sales to minors result in a suspension of the merchant's license to sell tobacco, and a fine of up to \$500. Repeat offenders are subject to license revocation.

In addition to the license, the law requires a remote-controlled electronic lock-out device on cigarette vending machines which are accessible to minors. These devices, called "Utah Remotes" in the vending trade, cost under \$50 and can be installed in under 30 minutes. Any attempt to defeat the lock-out or release the lock-out for a minor can result in a license suspension and fine. Private cafeterias, such as factories and taverns where minors are prohibited, are exempted from the lock-out requirement.

Furthermore, a sign provided by the City that reads: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW" in red, one-inch letters on a white background, must be posted at or near every display of tobacco products. This sign requirement was added because of a study reported in the June 26, 1987 issue of the *Journal of the American Medical Association*, entitled, "Legislative Efforts to Protect Children from Tobacco," which found that compliance with State restrictions was highest in stores where a warning sign was posted.

The ordinance also sets a minimum age of 18 years to sell tobacco. This is patterned after the minimum age to sell liquor in Illinois, and recognizes the fact that peer pressure on a younger clerk to sell tobacco to a 17-year-old customer might make it too difficult to say no. This provision has raised the objection of the Illinois Retail Merchants Association who argue that 16- and 17-year-old clerks may lose their jobs if they are not allowed to sell tobacco. So far, this has not been the case.

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In addition, free distribution of tobacco products is limited to a licensed merchant's store, and no license or free delivery is permitted within 100 feet of any school, child care facility or other building used for education or recreation programs for children. A May 1987 report from the Department of Health and Human Services recommended such a ban on free samples because "...they inevitably fall into the hands of children." The 100-foot proximity ban mirrors the Illinois State liquor law and backs up the school district ban of tobacco on school grounds. This section would also address an older teen giving cigarettes to a minor at a park or at other gathering points for adolescents.

The final section of the Woodridge tobacco ordinance is the prohibition on possession and attempts to purchase tobacco by minors under 18 years of age. Minors can be cited using a mail-in "parking ticket" with a \$25 fine for possession and a \$50 fine for attempting to purchase. Police enforcement of this section is similar to the seat belt law, in that officers do not make "sweeps," searching for cigarettes in meeting places for juveniles, but rather use the law when contacting minors for other violations such as curfew or disturbance calls. Although no police arrest record is generated when a ticket is written, the issuing officer does attempt to contact the parent via telephone prior to the end of the watch.

I strongly feel that adolescents must be accountable for their actions. It is unfair to place the entire onus of the law on the merchant. To do so allows the minor to "keep shopping" until a merchant willing to sell is found. This clause also backs up the merchant who might be harassed by underage minors. Now, the merchant can call the police instead of watching the minor walk across the street to his competitor. For this very reason, under Illinois' liquor law, it is a violation for a minor to attempt to purchase liquor.

Adolescents look to adults for guidelines or limits. By not addressing underage possession, society sends a confusing mixed message to minors about use of cigarettes. Illinois' 103-year-old tobacco law is silent on possession by minors, and several students have asked me, "If it's not any good for you, why is it legal for kids to smoke?" Woodridge is one of the few communities where it is not legal for children to smoke or even possess tobacco. This is currently the law in only 12 States.

It is important to understand that the Woodridge tobacco license law is a civil action as opposed to a criminal action. A license action is heard in an informal hearing before the mayor, not in a misdemeanor criminal court with long delays and expensive legal motions. Recently, police in Ramsey, Minnesota made criminal arrests on three working-mother store clerks who sold to a police supervised minor. The public response in the press was very negative and had a chilling effect on further police enforcement. The public response to a civil license action and fine in Woodridge has been overwhelmingly positive. The City has not received a single complaint from either merchants or the public on the enforcement of the ban on sales or possession by minors.

After the tobacco license law was adopted by the city council, merchants were hand-delivered a copy of the ordinance and questions were answered about implementation. The license application was accepted by mail and the fee kept low at \$50, which covered printing and administration. Merchants were warned that the police would be using 13-year-old special agents to check compliance with the new age restrictions. Merchants were also given 30 days grace after the law's effective date to train employees and install the vending machine lock-outs. Only one store was unable to complete the installation within the grace period and was granted an additional 30-day waiver.

During each of the following "sting" operations, statistics were recorded for the ongoing DePaul University study. At the same day and time, DePaul research assistants would also test all tobacco-selling merchants that surround but were located just outside the jurisdiction of the Woodridge ordinance, to document what effect the law would have on their sales behavior.

After the first enforcement, 33% of licensed merchants sold to the 13-year-old police special agent. The mayor, serving as liquor and tobacco commissioner, followed past precedent on liquor license actions involving sales to minors, and issued written warnings and no fines.

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On the second enforcement, only 10% of merchants sold. These stores, two national chain gasoline stations and one regional chain drug store received a one-day license suspension and a \$400 fine. None of the merchants contested the hearing, suspension, or fine.

On the third and fourth stings, none of the merchants sold cigarettes to the 13-year-old police agent, including through vending machines! According to Dr. Leonard A. Jason, supervising the DePaul University study, Woodridge is the first community in the United States to document 100% compliance with tobacco age restrictions.

However, the data from the merchants surrounding but just outside the jurisdiction of the Woodridge tobacco license ordinance were shocking. Despite full page coverage in the *Chicago Tribune* and evening news features from two Chicago television stations, these stores sold to 13-year-old children 94% of the time, usually with no questions asked. It is clear from the data that Woodridge, Illinois has solved only part of its tobacco sales problem. Because of urban sprawl, Woodridge adolescent smokers merely walk across the street to Downers Grove, Darien or Lisle, to buy their cigarettes. Woodridge, of course, has no control over another community's merchants. Thus far, only one of the four neighboring towns has licensed tobacco sales. Downers Grove has resisted adopting a similar ordinance because that city does not issue business licenses, although they do license liquor sales.

In addition to the merchant study, we also conducted anonymous tobacco-use surveys among 650 Jefferson Junior High School students to determine what effect the new law would have on users, and if police/community relations would suffer. The surveys were conducted by the school rather than by the police DARE program to avoid bias, and were done before and after publication of the tobacco license law.

Of the 7th and 8th grade students surveyed, 98% said they knew of the new law banning possession and sales of tobacco to minors; 72% said they thought the law would help prevent them from smoking, and 55% said they thought it would deter other students from smoking. Of the 16% of students who claimed to be regular cigarette smokers, 12 years was the average age of first tobacco use; 15% of student smokers were already using a pack of cigarettes a day. Although the students ability to purchase cigarettes in Woodridge dropped dramatically from 83% before the law to a self-reported 39% after the law was adopted, 72% of student smokers reported buying cigarettes from merchants outside the jurisdiction of the Woodridge license law.

In the earlier Chicago study by Dr. Leonard A. Jason of DePaul University, extensive interviews of underage smokers found they obtained their cigarettes 74% of the time from retail merchants. That percentage was further narrowed to 37% from gasoline stations, 23% from food stores, 11% from drug stores, and only 3% from vending machines. The number one reason given by the teens for where they purchased cigarettes was cheapest price. Gasoline stations, in fact, do have the lowest prices for cigarettes while vending machines have the highest prices. Even though these underage smokers can not yet drive a car, they most often walk into a gasoline station to illegally purchase cigarettes. And based on the Woodridge experience, even though there is no car parked at any gas pump, gasoline station attendants often sold cigarettes to 13-year-old police special agents.

In the course of presenting the Woodridge tobacco license law to neighboring communities, (eight of which have adopted similar laws as of May 1990), the technique of using 13-year-old police special agents to test compliance with the age restriction section has been questioned as police entrapment.

The courts have deemed it entrapment when the police force or compel a person to commit a crime. If the police merely provide an opportunity for criminal activity to be observed and documented, then there is no entrapment. If the police agent looks 13 years old, does not present altered identification, and does not offer a compelling plea such as, "My mother just came home from the hospital with a broken leg and sent me to buy her cigarettes," then there is no entrapment. Also, because this is a civil, administrative license hearing, the rules and weight of evidence are different from a criminal trial.

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One deficiency in the Woodridge ordinance was discovered recently. While presenting the Woodridge license law to the City of Woodstock in McHenry County, Illinois, I observed a merchant selling loose, unpackaged individual cigarettes for a dime. The cigarettes were in a clear plastic container next to a red plastic bowl of Bazooka-brand bubble gum for a nickel. Although the clerk pleaded ignorance as to the owner's motive, it was clear the display was targeted at the children. Few adult smokers would buy one cigarette for a dime. According to both the State of Illinois Revenue Department and the Federal Bureau of Alcohol, Tobacco and Firearms, such unpackaged sales are not illegal, as long as the original tax was paid and the health warning was displayed somewhere on the container. This practice must be outlawed.

Many people view smoking as an issue of freedom of informed adult choice. Few would argue that the 13-year-old students used in this study possess the knowledge or emotional maturity to make an informed decision on the risks of smoking. However, as we have seen from the Jefferson Junior High School survey and most notably the National Institute on Drug Abuse's National Household Survey on Drug Use, 13 years is now the average age adolescents begin smoking.

Let me emphasize the word "average." I recently received a phone call from Mr. Brent Schendewolf, principal of Lovejoy Elementary School in Alton, Illinois. He discovered a 3rd grade student, 9 years old, with a tin of Hawken ruff cut Wintergreen dipping tobacco. The child said he has been buying it at the Clark gasoline station in front of his school bus stop.

As we have learned from the 1988 Surgeon General's report on the health consequences of smoking, "Cigarettes and other forms of tobacco are addicting...similar to addiction to drugs such as heroin and cocaine." What many people do not realize is the addicting effect on children is just as dramatic. A study by Professor R.T. Ravenhold, of 15-year-olds who smoked as few as five cigarettes per day, found 51% had tried to stop smoking but failed, and 27% said they could not stop smoking no matter how hard they tried.

So when the tobacco industry argues that smoking is a freedom of informed adult choice, in reality the current 13-year-old smoker, or 9-year-old chewer, will have their adult freedom of choice stolen away from them by nicotine addiction.

As a police officer assigned to drug prevention duties in our community's schools, I would like to make a case for controlling cigarette sales because of their use as a "gateway drug" for adolescents. Gateway drugs are drugs of first use that facilitate progression to more dangerous illicit drug use.

Many studies have established a statistical link between adolescent cigarette smoking and the use of illicit drugs like marijuana. The National Institute on Drug Abuse documented such a relationship as early as 1975. Their study, "Predicting Adolescent Drug Abuse," found a strong connection between junior high school student cigarette use and the use of other illicit drugs. Dr. Shapiro, writing in the *International Journal of the Addictions* summarizes: "The data seem to indicate abstinence from one activity, (adolescent cigarette smoking), would inhibit experimentation and possible problems with other substances."

There is a very real physical explanation for this statistical connection. Adolescents are unable to successfully deeply inhale and hold harsh marijuana smoke without first becoming accomplished cigarette smokers. Without cigarettes facilitating or "training" the lungs, adolescents merely cough up the marijuana smoke and are unable to become intoxicated. Without the reward of being high, the student soon loses interest in the substance. In fact, 92% of regular adolescent marijuana smokers are also regular cigarette smokers, according to the National Household Survey on Drug Use.

Thus, what starts as cigarette use and addiction at 13 years of age becomes marijuana use and dependence at 15 years and crack cocaine smoking and addiction at 17 years of age. Rather than waiting to treat crack cocaine addiction with expensive rehabilitation, it makes sense to focus on adolescent drug prevention. According to Dr. Robert DuPont, an authority on juvenile drug abuse: "Prevention of cigarette smoking is a high priority in the prevention of dependence on all drugs."

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In the matter of tobacco sales to minors, there is compelling government public health interest in restricting children's access to tobacco products. There is documented evidence from studies conducted in urban, suburban and rural communities across the country that the sale of tobacco is being made to children; and current regulative efforts have proven to be ineffective. It is then reasonable to license merchants so as to enforce age restrictions on the sale, possession and use of tobacco products. The granting of a license is the granting of a public trust, whether it is the operation of a vehicle, the practice of a profession, or the sale of potentially dangerous products. The violation of that public trust by reckless operation of a vehicle, abuse of professional practice or the sale of substances in violation of age restrictions should and must result in the suspension or revocation of that public trust as expressed in that license.

One purpose of government is to protect those in our society who are unable to protect themselves from danger. Certainly the protection of 12- or 13-year-old children from easy access to large quantities of an addicting and known cancer-causing drug should be the responsibility of government.

Until Federal or State governments are willing to address this threat to children, local communities like Woodridge, Illinois will have to regulate tobacco, themselves. Unfortunately, without a national approach to this problem, even the best laws, diligently enforced, can be defeated by neighboring communities and States whose priorities lie elsewhere.

Police officers in Illinois learned that lesson battling drunk-driving deaths. Illinois had lowered the drinking age from 21 to 18 years during the Viet Nam war years. When teen and innocent driving deaths soared, the law was changed back to 21 years of age. But Illinois was unable to stop the senseless deaths because our neighbor to the north, Wisconsin, maintained the lower alcohol age limit. Every weekend, teens from the populous Chicago metropolitan area would drive across the Stateline to legally drink in Wisconsin, and then attempt to drive back to Illinois, drunk. It wasn't until the national age limit of 21 years was imposed on Wisconsin with the threat of Federal highway funds being cut, that Illinois drunk driving deaths were meaningfully reduced.

I believe the 390,000 American lives lost each year to smoking addiction will not be meaningfully reduced until we address the issue of cigarette sales to 13-year-old children on a national basis, using the same carrot-and-stick approach that was successful in drunk driving.

If we are to win the war on drugs, American politicians must become as concerned with nicotine drug sales to children as they are with foreign drug sales to adults.

I hope the Committee can recommend bold and decisive action to quickly address this issue. Everyday, another 3,000 children start using tobacco.

I would be happy to answer any questions the Committee might have.

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